

State Board of Equalization
OPERATIONS MEMO
For Public Release

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**SUBJECT: Wage Garnishments – Employer Liable for Amounts Withheld
But Not Paid to the Board**

I. PURPOSE

This operations memo provides guidelines and procedures for the implementation of Revenue and Taxation Code section 6704, enacted by Assembly Bill 2898 (Chapter 1052, Statutes of 2000). This law became effective January 1, 2001 and authorizes the Board to hold a taxpayer's employer liable for earnings the employer withheld, pursuant to an earnings withholding order (wage garnishment), but failed to remit to the Board.

II. BACKGROUND

Under section 6704, a taxpayer must provide substantiating evidence (e.g., payroll documentation) to the Board identifying amounts withheld as the result of a wage garnishment which were not remitted to the Board. Prior to holding an employer personally liable, the Board must provide written notification to the employer regarding the missing payments and allow 15 days for the employer to remit payment. Should the employer fail to remit payment for the withheld amounts, the Board will issue a tax determination against the employer.

The tax determination issued against the employer will include the amount of the withheld payments the employer failed to remit and will be billed as a tax liability regardless of the composition of the taxpayer's liability. For example, the missing wage garnishment payments will be billed to the employer as a tax liability even if the taxpayer's account balance is only comprised of penalty and/or interest amounts. Section 6704 further states if several wage garnishment payments were not remitted by the employer, they can be billed as one tax liability with interest accruing on the entire amount billed from the date the first unremitted payment was withheld from the taxpayer's earnings. (A determination can be issued against an employer up to seven years from the date the first unremitted wage garnishment payment was withheld from a taxpayer.) As with other tax determinations, a 10% finality penalty will accrue if the liability is not paid prior to the finality date. The same appeal rights available for other determinations issued by the Board apply to determinations issued to employers under section 6704.

Immediately upon an employer's liability becoming due and payable (i.e., a "final liability"), an adjustment will be made to the taxpayer's account, whether or not payment from the employer has been received. In essence, section 6704 allows the Board to shift the liability (for the amount of the unremitted wage garnishment payments) from the taxpayer to the employer.

Since section 6704 states the employer will be held liable for the amounts as if it were a tax liability, all remedies available to the Board in collecting tax liabilities are available in collecting liabilities created under this section.

III. DISTRICT RESPONSIBILITIES

Investigation

Instances involving section 6704 are expected to be rare; however, when they do arise, staff should investigate them thoroughly. The starting point of the investigation should involve obtaining documentation identifying the amounts the employer withheld but failed to remit to the Board. In most cases, taxpayers can provide this information by submitting copies of their payroll documents (e.g., paycheck stubs). Should these documents be unavailable, or if they do not provide the necessary information, other substantiating evidence provided by the taxpayer (e.g., documentation identifying amounts withheld from taxpayer's earnings) may also be considered. If the taxpayer is unable to provide sufficient documentation, staff will inform the taxpayer the request cannot be processed. In these instances, no further action by staff is required.

Payment Verification

Upon receipt of the documentation, staff should review the taxpayer's account information in the Integrated Revenue Information System (IRIS) to verify the payments have not been previously applied to the taxpayer's account. If the payments cannot be located, field staff should contact the taxpayer's employer by telephone to rule out the possibility of errors being made by the employer or the Board. For example, the employer may have referenced an incorrect account number on the payments or may have directed the payments to another agency (e.g., Franchise Tax Board, Internal Revenue Service) in error. Likewise, the Board may have made errors in processing the payments, causing them to be applied to an incorrect account.

In situations where the payments are found to have been applied to an incorrect account (either through the Board's or the employer's error), staff should move the payments to the taxpayer's account. If field staff is unable to move the payments, Return Analysis Section (RAS) staff should be contacted for assistance. After the misapplied payments have been moved to the taxpayer's account, field staff should generate a Statement of Account in IRIS and provide it to the taxpayer.

If the employer remitted the payments to another agency in error, the taxpayer should be instructed to contact the other agency to resolve the situation. The Board will not request payment from the employer or hold the employer liable in these situations. If the earnings withholding order is still in effect, staff should ensure the employer is aware of the correct Board address where future wage garnishment payments should be directed.

Request Payment from Employer

When staff has confirmed the Board has not received the withheld amounts, the employer will be requested to immediately remit payment for the missing amounts. Since section 6704 requires the employer be provided with a written request for payment for the unremitted amounts prior to being held personally liable, staff should mail letter BOE-425-EM (ACMS DocGen) to the

employer. (When generating this letter, a taxpayer copy is created and should be mailed to the taxpayer.)

Letter BOE-425-EM identifies the amount withheld from the taxpayer's earnings as a result of the wage garnishment along with the total amount actually received by the Board. Further, this letter requires the employer to provide payment for the unremitted amounts within 15 days to avoid being held personally liable under section 6704. While section 6704 only requires the Board provide the employer 15 days to respond, in some instances it may be appropriate to allow the employer additional time.

Should the employer respond with payment, the payment should be applied to the taxpayer's account. Once the payment has been processed, staff should generate a Statement of Account in IRIS and provide it to the taxpayer. No further action against the employer should be necessary. However, if the wage garnishment is still in effect, staff may need to review the taxpayer's account periodically to ensure all future wage garnishment payments are received from the employer.

If the response received from the employer indicates payment for the identified amounts was previously remitted to the Board, staff may need to contact the employer by telephone to obtain additional information. As previously mentioned, staff should rule out the possibility the employer actually remitted payment to the Board (and the payment was applied to an incorrect account) or remitted payment to another agency in error before continuing to pursue payment from the employer.

Holding Employer Liable

If the employer does not respond to letter BOE-425-EM, or if the response provided is not satisfactory (e.g., unable to provide information necessary to confirm payments were remitted), staff will request the employer be held liable. To accomplish this, staff will prepare a memorandum to the Special Procedures Section (SPS) detailing the situation and requesting a determination be established and billed against the employer under section 6704. The memorandum must include the following information:

- Taxpayer's name and Board account number.
- Employer's name, mailing and business addresses, and Board account number (if applicable).
- Date the earnings withholding order was issued and the employer's response to the order.
- Amounts withheld from the taxpayer's earnings which were not received by the Board, including the dates each amount was withheld (if available).
- Summary of staff's investigation, including the results of reviewing the taxpayer's account information in IRIS and contacting the employer.
- Statement indicating the date letter BOE-425-EM was mailed to the employer and the employer's response.
- Copies of all pertinent documents (e.g., employer's response to earnings withholding order and payment documentation provided by taxpayer).

The District Principal Compliance Supervisor or District Administrator must approve the request prior to sending it to the SPS. A copy of the approved request should be retained in the taxpayer's district collection notes.

Taxpayer's Liability

As provided in section 6704, staff must not require payment from a taxpayer for any amounts withheld but not remitted by the employer (i.e., amounts included in the request sent to the SPS). Once the employer's determination is final, Petition Section staff will perform the necessary adjustment to reduce the liability on the taxpayer's account.

Responsible Office

The district responsible for collection of the taxpayer's liability is also responsible for collection of the employer's liability, even if the employer is located in a different Board district than the taxpayer. However, if liabilities existed on the employer's account prior to the billing of the determination, the district of control for that account is responsible for collection of all the employer's liabilities.

The district office initiating the determination against the employer will be responsible for assisting the Petitions Section in the event the employer petitions the determination.

IV. SPECIAL PROCEDURES SECTION RESPONSIBILITIES

Staff in SPS is responsible for reviewing the district's request to ensure all necessary information is provided. If there are any questions regarding the request, SPS staff should contact the person who prepared the request. In the event the request is incomplete and cannot be processed, it should be returned to the district along with a clear explanation of why the request has been denied.

SPS staff will handle complete requests by verifying the employer has an active sales tax account. If the employer does not have an active account, SPS staff will establish an arbitrary account using the information provided in the district's request.

SPS staff will add comments to the taxpayer's and employer's accounts in IRIS. The comments will include a cross-reference of the related account number and will include a brief description of how the accounts are related to each other. SPS staff will then contact the supervisor of the RAS's "Quality Assurance and Special Projects Team" and provide him or her with all documentation pertaining to the request.

V. RETURN ANALYSIS SECTION RESPONSIBILITIES

Staff in RAS will create and bill determinations issued under section 6704. However, RAS will not be responsible for assisting the Petitions Section with petitions for redetermination.

The primary/secondary liability functionality available in IRIS (used to link liabilities on two or more accounts) cannot be used for cases involving section 6704. The inability to use this existing functionality stems from the fact that section 6704 requires the taxpayer's account to be adjusted when the determination issued to the employer is final. Adjustment of the taxpayer's account is not dependent upon receiving payment from the employer. Therefore, RAS staff must

manually input local and district tax allocation information on the employer's account (based upon the local and district tax allocation on the taxpayer's account).

Create Revenue Source Information (Revenue) and Issue Notice of Determination

1. Create a One-Time (OTM) Financial Obligation (FO) on the employer's account using the REV FM screen. The revenue and payment due dates for the FO are the same date, the earliest date on which the employer first withheld amounts from the taxpayer's earnings.
2. Input revenue information on the REV RE screen for the one-time FO. The district and local tax allocation found on the taxpayer's account must be duplicated on the employer's revenue information to ensure payments received from the employer are correctly allocated according to the taxpayer's business location(s). RAS staff may need the assistance of Local Revenue and Allocation Section staff to duplicate local tax allocation information.
3. Accept the revenue as "primary revenue" using the "EWO" difference adjustment reason code.
4. Create the employer's notice of determination using the DIF NN screen. Include Bill Note #138 which references the taxpayer's name, Board account number, and mentions section 6704. This bill note also references the date on which the Board notified the employer in writing of the missing payments (form BOE-425-EM) and identifies the telephone number of the Board office the employer should contact for assistance. Staff will also include Bill Note #999 (free form text) to identify the wage garnishment payments (dates and amounts) the billing represents.

Create Assignment

RAS staff will create a manual assignment in IRIS on the employer's account for the Petitions Section. (The assignment is created on the employer's account since Petitions staff will need to ensure the employer's determination is final prior to adjusting the liability on the taxpayer's account.) Staff in the Petitions Section will be responsible for adjusting the taxpayer's account once the determination issued against the employer is final.

After displaying the difference detail (DIF DD) of the employer's determination, RAS staff will press the F24-ASC key and navigate to the Maintain Task (ASC MT) screen to input the necessary assignment information:

- Business Action Code = "EWOADJ"
- Due Date = 60 days after the date of the employer's determination
- Office = "PETITION"
- Workgroup = "ADJ/SPEC"
- Role = "RED&ADJ"
- Task Notes identifying the taxpayer's name and account number

RAS staff should forward all documentation pertaining to the determination to the employer's file in the Taxpayer Records Unit.

VI. PETITIONS SECTION RESPONSIBILITIES

Petition for Redetermination

An employer who disagrees with a determination resulting from section 6704 will have 30 days from the date of the Notice of Determination to file a petition for redetermination. Should this occur, Petitions Section staff is responsible for handling the employer's petition by following existing petition procedures. If necessary, the district that initiated the determination under section 6704 will provide assistance to Petitions Section staff.

Adjustment to Taxpayer's Account

Petitions Section staff will perform the adjustment to the taxpayer's account once the employer's determination is final. Staff should access their Assignment Control assignments (Business Action Code, "EWOADJ") on (or shortly after) their due dates, which is initially set at 60 days after the employer's Notice of Determination is generated. The assignment is linked to the employer's account since a review of the determination is necessary to confirm it is final prior to performing the adjustment on the taxpayer's account.

In the event the determination has been petitioned, staff will modify the due date of the assignment (allowing 30, 60, or 90 days depending upon the situation) for follow-up at a later date. Staff should also modify the assignment due date (60 days) once a Notice of Redetermination has been issued.

Upon confirming the employer's determination is final, staff will perform the adjustment of the taxpayer's account using the Adjustment Type code "EWO" on the DIF LA screen (legal adjustment) in IRIS. When performing these adjustments, staff must be aware:

- The adjustment is only for the total amount of the unremitted wage garnishment payments billed to the employer. The adjustment amount excludes any interest and penalty amounts the employer's determination may include.
- The effective date of the adjustment is the same as the effective date of the employer's liability (see the period date for the employer's liability on the DIF DA screen).
- The adjustment should first be made to the tax portion of the taxpayer's liability before adjusting any interest and/or penalty amounts.

Once the adjustment has been completed, Petitions Section staff will generate a statement of account in IRIS for the taxpayer. Staff will include Bill Note #999 (free form text) to provide an explanation of the adjustment performed.

VII. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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